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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ALMONT AMBULATORY
 SURGERY CENTER, LLC, a
 California limited liability company, et
 al.,

Plaintiffs,
 v.

UNITEDHEALTH GROUP, INC.;
 UNITED HEALTHCARE SERVICES,
 INC., UNITED HEALTHCARE
 INSURANCE COMPANY;
 OPTUMINSIGHT, INC., and DOES 1
 through 20,

Defendants.

UNITED HEALTHCARE SERVICES,
 INC., UNITED HEALTHCARE
 INSURANCE COMPANY;
 OPTUMINSIGHT, INC.,

Counterclaim Plaintiffs,
 v.

ALMONT AMBULATORY
 SURGERY CENTER, LLC, a
 California limited liability company; et
 al.,

Counterclaim Defendants.

Case No. 2:14-cv-03053-MWF(VBKx)
 Honorable Michael W. Fitzgerald

**COUNTERCLAIM DEFENDANTS
 MICHAEL OMIDI, M.D. AND
 JULIAN OMIDI'S:**

**(1) NOTICE OF MOTION AND
 MOTION TO DISMISS
 COUNTERCLAIM;**

**(2) NOTICE OF JOINDER AND
 JOINDER IN COUNTERCLAIM
 DEFENDANTS ALMONT
 AMBULATORY SURGERY
 CENTER, LLC, ET AL.'S MOTION
 TO DISMISS AND STRIKE
 COUNTERCLAIM; AND**

**(3) MEMORANDUM OF POINTS
 AND AUTHORITIES**

[FRCP Rule 9(b) and 12(b)(6)]

Date: October 6, 2014
 Time: 10:00 a.m.
 Courtroom: 1600, 16th Floor, 312 N.
 Spring Street

Complaint Filed: March 21, 2014

Trial Date: None Set

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 6, 2014 at 10:00 a.m. in Courtroom 1600, 16th Floor of the United States District Court, Central District of California, located at 312 N. Spring Street, Los Angeles, CA 90012-4701, Counterclaim Defendants Michael Omid, M.D. and Julian Omid will and hereby do move for an order regarding the Counterclaim of Counterclaim Plaintiffs United Healthcare Services, Inc., United Healthcare Insurance Company, and Optuminsight, Inc. (collectively "United") as follows:

(1) Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure ("FRCP"), dismissing, without leave to amend, the Counterclaim in its entirety as to Dr. Michael and Julian Omid because United has alleged no material facts to support personal liability of Dr. Michael and Julian Omid and rely on deficient alter ego allegations in an attempt to hold them liable for alleged acts by the "Corporate Counterclaim Defendants."

(2) Pursuant to FRCP Rules 9(b) and 12(b) dismissing, without leave to amend, the First Cause of Action for Fraud because United fails to allege facts to support essential elements of fraud. In particular, United fails to allege that any material misrepresentation was made at all, much less by Dr. Michael and Julian Omid, and fails to allege facts to support justifiable reliance. United also fails to allege fraud with the specificity required by FRCP Rule 9(b). In addition, United's cause of action is time-barred.

(3) Pursuant to FRCP Rule 12(b)(6), dismissing, without leave to amend, the Second Cause of Action for Unfair Business Practices, Cal. Business & Professions Code § 17200, because United fails to allege facts showing that there were any "fraudulent practices" (the alleged predicate acts), and, as a matter of law, United is not entitled to any legally available form of relief from Dr. Michael and Julian Omid. In addition, United's cause of action is time-barred.

1 (4) Pursuant to FRCP Rule 12(b)(6), dismissing, without leave to amend, the
2 Third Cause of Action for Conspiracy to Commit Fraud because United fails to
3 allege facts to support the elements of fraud on which the alleged conspiracy is
4 predicated and fails to allege facts to support the elements of civil conspiracy, in
5 particular that Dr. Michael and Julian Omidì entered into an agreement to commit
6 fraud. United also fails to allege the date of the last overt act in furtherance of the
7 alleged conspiracy.

8 (5) Pursuant to FRCP Rule 12(b)(6), dismissing, without leave to amend, the
9 Fourth Cause of Action for Intentional Interference with Contractual Relations
10 because United fails to allege facts to support essential elements of an interference
11 claim, in particular that the contracts allegedly interfered with were with third
12 parties and that Dr. Michael and Julian Omidì were aware of the terms of the
13 contracts and engaged in intentional acts designed to induce a breach or disruption
14 of the contractual relationship. In addition, United's cause of action is time-barred.

15 (6) Pursuant to FRCP Rule 12(b)(6), dismissing, without leave to amend, the
16 Fifth Cause of Action for Restitution under ERISA § 502(a)(3) because United fails
17 to allege any facts showing that Dr. Michael and Julian Omidì are personally liable
18 under this cause of action.

19 (7) Pursuant to FRCP Rule 12(b)(6), dismissing, without leave to amend, the
20 Sixth Cause of Action for Declaratory and Injunctive Relief under ERISA §
21 502(a)(3) because United fails to allege any facts showing that Dr. Michael and
22 Julian Omidì are personally liable under this cause of action.

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